

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:11-HC-2051-BR

UNITED STATES OF AMERICA,)
)
Petitioner,)
) MOTION FOR VOLUNTARY
v.) DISMISSAL WITH LEAVE OF
) COURT AND WITH PREJUDICE
LEO STEPHENS,)
)
Respondent.)

Petitioner the United States of America, by and through the United States Attorney for the Eastern District of North Carolina, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, hereby moves the Court to voluntarily dismiss, with prejudice, the certification of a sexually dangerous person against Respondent, Leo Stephens.

A settlement agreement, subject to the Court's approval, is attached hereto as Exhibit A, which details the manner in which the parties propose that this matter be concluded. Pursuant to the terms of the settlement agreement, the parties jointly request that the Court conduct a hearing to inquire of counsel for the United States, Respondent, and Respondent's counsel whether each of them personally affirms in open court that the terms and conditions of the settlement agreement have been

entered and undertaken knowingly and voluntarily after having adequate opportunity to seek counsel.

WHEREFORE, Petitioner requests that the Court allow Petitioner to voluntarily dismiss, with prejudice, the certification of a sexually dangerous person against Respondent, Leo Stephens, subject to the above-mentioned terms.

Respectfully submitted, this the 29th day of February, 2012.

THOMAS G. WALKER
United States Attorney

By: /s/ W. Ellis Boyle
W. ELLIS BOYLE
Assistant United States Attorney
Civil Division
310 New Bern Avenue, Suite 800
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Telephone: (919) 856-4530
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N.C. Bar No. 33826
Attorney for Petitioner

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been served upon Charles Brewer, counsel for respondent, by electronically filing the foregoing with the Clerk of Court this date, February 29, 2012, using the CM/ECF system which will send notification of such filing to the above.

By: /s/ W. Ellis Boyle
W. ELLIS BOYLE
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Attorney for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:11-HC-2051-BR

UNITED STATES OF AMERICA,)
Petitioner,)
) SETTLEMENT AGREEMENT
v.)
)
LEO STEPHENS,)
Respondent.)

Petitioner, the United States of America, by and through the United States Attorney for the Eastern District of North Carolina, and Respondent, Leo Stephens, by and through his counsel of record, Charles Brewer, have agreed that this matter should be concluded in accordance with terms and conditions of this agreement as follows:

1. This agreement constitutes the full and complete record of the agreement of this matter. There are no other terms of this agreement in addition to or different from the terms contained herein.

2. Respondent admits and stipulates that the United States lawfully certified him as a sexually dangerous person under the Adam Walsh Act, as codified in 18 U.S.C. § 4248 pursuant to procedures established in 18 U.S.C. § 4248(a) and that said statute was upheld as constitutional in United States v. Comstock, 130 S. Ct. 1949 (2010), and again on remand to the Fourth Circuit of Appeals, in United States v. Comstock, 627 F.3d

GOVERNMENT
EXHIBIT
A

513 (4th Cir. 2010), and that based on the above established procedures his release from imprisonment was stayed on March 23, 2011.

3. Respondent admits and stipulates that the criminal judgment against him in the matter of United States of America v. Leo Stephens, in the U.S. District Court for the Southern District of Mississippi, Docket No. 4:08cr5HTW-LRA, on September 1, 2010, imposed upon him a life term of supervised release, and that the judgment ordered that the term of supervised release was to be served "upon release from imprisonment." [Criminal Docket Entry 18]. Respondent admits and stipulates that, by the operation of law defined by 18 U.S.C. § 4248, his "release" from imprisonment was "stayed," and that, consequently, his term of supervised release has not commenced. See e.g. David H. Tobey v. United States, Civil Action No. DKC 10-1358, Docket Entry 35 (Chasanow, Judge) (D. Md.); United States v. Marvin Vigil, Criminal No. 1:99-CR-509-LH (Hansen, Judge). A copy of the criminal judgment is attached to the proposed motion to dismiss as Exhibit B.

4. Respondent agrees and promises that, in consideration of the government's agreement to voluntarily dismiss this action with prejudice, he will not collaterally attack the order of supervised release contained in the criminal judgment against him.

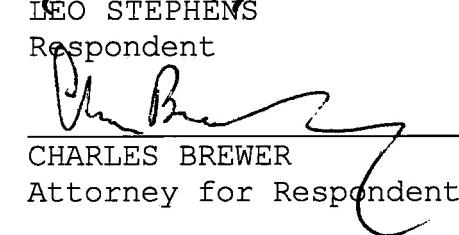
5. Petitioner agrees and promises that, in consideration of Respondent's admissions and stipulations set out in Paragraphs 2 through 3 above and Respondent's agreements and promises in Paragraph 4 above, the United States will file a motion under Federal Rule of Civil Procedure 41, asking the Court to dismiss this action with prejudice and to lift the stay on Respondent's release from imprisonment.

6. Petitioner and Respondent jointly request that the Court conduct a hearing to inquire of counsel for the United States, Respondent, and Respondent's counsel whether each of them personally affirms in open court that the terms and conditions of this settlement agreement have been entered and undertaken knowingly and voluntarily after having had adequate opportunity to seek counsel.

Respectfully submitted, this the 27th day of February, 2012.

THOMAS G. WALKER
UNITED STATES ATTORNEY

BY: 
W. ELLIS BOYLE
Assistant U.S. Attorney


LEO STEPHENS
Respondent

CHARLES BREWER
Attorney for Respondent

APPROVED, this _____ day of _____, 2012.


W. Earl Britt
United States District Judge

UNITED STATES DISTRICT COURT
Southern District of Mississippi

UNITED STATES OF AMERICA

v.

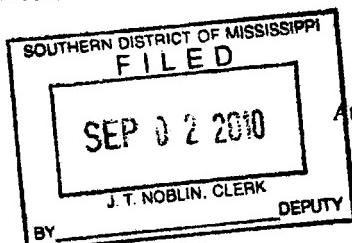
Leo Stephens

REVOCATION JUDGMENT IN A CRIMINAL CASE

Case Number: 4:08cr5HTW-LRA-001

USM Number: 04670-043

Atty. Abby Brumley, 200 S. Lamar St., Ste. 200N, Jackson, MS 39201 (601) 948-4284
Defendant's Attorney:



THE DEFENDANT:

pleaded guilty to count(s) Mandatory, Special Condition (D), and Standard Condition 11

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
Mandatory Condition	On or about September 25, 2009, Leo Stephens sexually molested a nine year old female child by touching her breast and buttocks. On or about that same day, Leo Stephens sexually molested a ten year old male child by touching his genitals.	09/25/09	

(Violations continue on Page 2)

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

August 6, 2010
Date of Imposition of Judgment

Signature of Judge

The Honorable Henry T. Wingate Chief U.S. District Court Judge
Name and Title of Judge

Date

GOVERNMENT
EXHIBIT

B Document 54-2

BOP STEP 000011

Case 5:11-hc-02051-BR-JG

Filed 02/29/12 Page 1 of 2

A TRUE COPY, I HEREBY CERTIFY.
J. T. NOBLIN, CLERK
BY:
DEPUTY CLERK

DEFENDANT: Leo Stephens
CASE NUMBER: 4:08cr5HTW-LRA-001

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
Special Condition (D)	On or about September 25, 2009, Leo Stephens violated Special condition (D) requiring that he have no contact with any minor under the age of 18 when in fact, he was in the presence of two minors under the age of 18.	09/25/09	
Standard Condition 11	Leo Stephens violated the standard condition that he report any arrest or contact with law enforcement within 72 hours. Stephens was arrested by Choctaw Tribal authorities on or about March 5, 2010 yet failed to report it until March 15, 2010.	03/08/10	

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:11-HC-2051-BR

UNITED STATES OF AMERICA,)
Petitioner,)
) PROPOSED ORDER
v.)
)
LEO STEPHENS,)
Respondent.)

The Court has considered Petitioner's Motion for Voluntary Dismissal and the Settlement Agreement entered into between the parties. The United States, Respondent, and Respondent's counsel have each personally affirmed in open court that the terms and conditions of the settlement agreement have been entered and undertaken knowingly and voluntarily after having adequate opportunity to seek counsel. The Court finds as a fact that the parties knowingly and voluntarily entered into the Settlement Agreement.

IT IS HEREBY ORDERED that pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure and for good cause, this action is DISMISSED.

IT IS FURTHER ORDERED that the stay of Respondent's release from Bureau of Prisons custody is lifted, and Respondent is ordered to be released from Bureau of Prisons custody. As set out in the criminal judgment in the matter of United States of America v. Leo Stephens, in the U.S. District Court for the

Southern District of Mississippi, Docket No. 4:08cr5HTW-LRA, on September 1, 2010, the Respondent shall report to the probation office in the Southern District of Mississippi within 72 hours of his release.

This the ____ day of _____, 2012.

W. Earl Britt
United States District Judge